

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

**CONDRA SMITH,**

**Plaintiff,**

**-v-**

**UNITED STATES DEPARTMENT OF  
EDUCATION, *et al.*,**

**Defendants.**

**Case No.: 1:20-CV-474-WCL-SLC**

**DEFENDANTS' JOINT RULE 12(B)(6) MOTION TO DISMISS**

Defendants Pioneer Credit Recovery, Inc. ("PCR"), General Revenue Corporation ("GRC"), and United States Department of Education ("ED") (collectively the "Defendants"), pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby jointly move to dismiss Plaintiff Condra Smith's Complaint and Demand for Jury Trial, and in support state:

1. On November 12, 2020, Plaintiff filed her Complaint and Demand for Jury Trial in the Allen Superior Court, Cause No. 02D09-2011-PL-000475 (the "Current Lawsuit"). ED subsequently removed the Current Lawsuit to this Court on December 17, 2020.

2. Plaintiff's claims in the Current Lawsuit are substantively identical to claims she asserted against PCR, GRC, and ED in previous litigation in the United States District Court for the Northern District of Indiana, Cause No. 1:18-cv-00348-HAB-SLC (the "Prior Lawsuit").

3. As detailed in the Defendants' Memorandum in Support (filed concurrently herewith), Plaintiff's claims in the Current Lawsuit are barred by the doctrine of res judicata: (1) the parties in the Current Lawsuit are the same as those in the Prior Lawsuit; (2) the causes of action in the Current Lawsuit are the same as those asserted in the Prior Lawsuit (*i.e.*, they emerge from the same core of operative facts); and (3) the Prior Lawsuit was resolved on the merits (*i.e.*,

summary judgment and final judgment were entered in favor of the Defendants and against Plaintiff). Accordingly, Plaintiff's Complaint should be dismissed in its entirety.

4. In any event, Plaintiff has failed to adequately plead a claim for fraud in her Complaint in the Current Lawsuit. Fraud must be pled with particularity. *See* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). Here, Plaintiff's pleading does not allege any specific misrepresentations by any particular individual associated with the Defendants which led to her being defrauded. Her allegations are therefore insufficient to support this claim.

5. In light of the foregoing, Plaintiff fails to state a claim upon which relief can be granted, and her entire Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

6. The factual and legal bases for this Motion are more fully detailed in the accompanying Memorandum of Law in Support.

WHEREFORE, Defendants PCR, GRC, and ED respectfully request the Court issue an order dismissing Plaintiff's lawsuit with prejudice, and grant all other relief the Court deems appropriate.

Respectfully submitted,

/s/ Justin A. Allen

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### **CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2021, a copy of the foregoing was filed with the Court using the Clerk of Court's CM/ECF system, which by its operation will send notice of this filing to all counsel of record. A copy of the foregoing was also served by United States Mail, postage prepaid to the following:

Condra L. Smith  
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Pro-Se Plaintiff

/s/ Justin A. Allen